
FYI-404

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

MANAGED AUDITS FOR TAXPAYERS

In an effort to make tax administration more user friendly, New Mexico law allows qualifying taxpayers to conduct managed audits, or “self-audits”, under prescribed circumstances for one or more tax programs subject to the Tax Administration Act. Included among those tax programs are gross receipts, compensating, corporate income, withholding and personal income taxes.

Taxpayers may also offset overpayments against underpayments in managed or Department audits.

For more detailed information please consult the resources listed in *For Further Assistance* on page 6.

Taxpayers should be aware that subsequent legislation, regulations, court decisions, revenue rulings, notices and announcements may affect the accuracy of this publication’s contents. Please contact the district tax office nearest you (see the last page of this publication) or check the Department’s web site at www.tax.newmexico.gov. Click on “Publications” on the “Forms and Publications” menu.

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INTRODUCTION

This publication, FYI-404, provides general guidance on issues affecting managed audits in New Mexico. Most forms and publications on a variety of tax programs are available at local tax offices around the state. Their addresses and phone numbers are on page 6. Forms, instructions and other publications are available also on the Department's web page at:

<http://www.tax.newmexico.gov>.

WHAT IS A MANAGED AUDIT?

A managed audit is a variation on a traditional field audit by the New Mexico Taxation and Revenue Department (NMTRD). A managed audit allows taxpayers to conduct an audit on themselves as specified in a signed managed audit agreement between the Secretary or the Secretary's delegate ("the Secretary") and the taxpayer or the taxpayer's authorized representative ("the taxpayer").

The taxpayer is to choose one of the following options in which the managed audit will be conducted:

Option A – The taxpayer will prepare the audit work papers with minimum guidance from the Department. The taxpayer will be issued a written statement from the Department stating that the Taxpayer may remain subject to audit by the Department for the Audit Period.

Option B – The taxpayer will work with an assigned auditor to develop an audit plan, have work papers reviewed by the assigned auditor through the audit process and, after completion and acceptance of the audit, will be issued a written statement from the Department stating that the specific issue(s) in the Audit Period covered by the agreement are closed to further audit by the Department.

Using the managed audit system may be the only way for certain taxpayers to avoid paying both penalty and interest, provided the assessment is paid within 180 days from the assessment date. If it is not paid within that time, interest will accrue from the time that tax was originally due.

WHO IS ELIGIBLE?

After written application by the taxpayer, the decision to enter into a managed audit agreement rests solely with the Secretary. The Secretary is not required to do so if the taxpayer's application is inadequate. The Department uses the following criteria, as a guideline, to determine eligibility for a managed audit:

- The Department has not already selected the taxpayer for audit;
- The Department is not currently pursuing collections on the taxpayer;
- The taxpayer demonstrates a willingness and ability to comply with New Mexico's tax laws;
- The taxpayer demonstrates an acceptable system of internal controls and business records;
- The taxpayer has not been the subject of a criminal investigation;
- The taxpayer's resources are available to conduct the managed audit;
- The taxpayer is not already in a legal dispute with the Department over the taxability of the transactions that are the subject of the managed audit;
- The managed audit does not apply to existing liabilities;

- The taxpayer has received no more than 2 non-filer notices;
- The taxpayer's outstanding liability was paid in full prior to requesting a managed audit agreement;
- The managed audit does not include transactions that are subject to a tribal gross receipts tax that the Department administers on behalf of any tribe pursuant to a Gross Receipts Tax Tribal Cooperative Agreement;
- The taxpayer has not entered into and completed a managed audit for the same tax issue previously.

THE APPLICATION PROCESS

The taxpayer must submit a written application on a form prescribed by the Secretary outlining the nature of the audit issues. The written application must identify the taxpayer. Prior to submitting the application, however, the taxpayer may approach the Department anonymously to ask if a certain situation meets general rules for a managed audit. Call 505/841-6216 to request a copy of the application.

THE MANAGED AUDIT AGREEMENT

The following criteria must be met before any managed audit agreement is effective. The managed audit agreement must:

- Bear the signatures of the taxpayer and the Secretary;
- Contain the taxpayer's declaration that all statements in the application and in the agreement are true and correct;
- Specify the report period(s) under audit;
- Indicate option A or B in the audit plan;
- Specify the type of receipts or transactions and tax program(s) under audit;
- Specify the audit issues;
- Specify the procedures and records used in performing the managed audit;
- Specify the managed audit's beginning date;
- Specify the date when the taxpayer will present the managed audit results to the Department; and
- Include the taxpayer's waiver of limitations on assessments for the report period(s) under audit, provided that the Department's standard audit procedures require a waiver.

After the taxpayer's disclosure of all relevant facts, the Secretary has sole discretion to accept, modify or terminate the managed audit agreement. The Secretary may terminate the agreement at any time during the process when deadlines are not met.

THE MANAGED AUDIT PROCESS

After the Department and the taxpayer have accepted and signed the agreement, a Department representative will be assigned to assist the managed audit process. The representative's functions include (but are not limited to):

- Issuance of a letter (Section 7-9-43 NMSA 1978) allowing the taxpayer 60 days to obtain evidence of the deductibility of transactions, if applicable;
- Assistance in designing and formatting audit work papers acceptable to the Department; and
- Assistance in designing a sampling methodology for the managed audit if needed.

CONCLUSION OF THE MANAGED AUDIT PROCESS

When the taxpayer has completed and submitted the managed audit, the Department representative will review the work. The procedures detailed in the managed audit agreement determine the extent of the review. The review may require the taxpayer to provide source documents, non-taxable transaction certificates, tax returns, or other accounting records for a sufficient audit review. Depending on the volume of transactions and the issues involved, the Department representative may choose either a detailed review or random-sample review of transactions.

When the managed audit does not conform to the agreement, the Department representative may return it to the taxpayer for revision. Any intentional misrepresentation of facts nullifies the agreement.

A managed audit that conforms to the managed audit agreement will likely produce an assessment. No interest (Section 7-1-67 NMSA 1978), or penalty (Section 7-1-69 NMSA 1978) is due if the managed audit concludes on or before the date specified in the agreement, and if the taxpayer pays the assessment in full within 180 days of the date on which the Secretary has mailed or delivered it. If the assessment is not paid within 180 days, interest will be assessed from the time that tax was originally due.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.newmexico.gov>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also offers a compact disk of all statutes and regulations. The order form is available at all local tax offices, through the Tax Information and Policy Office and on the Department's web page at www.tax.newmexico.gov. Specific regulations are also available at the State Records Center or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

Rulings. Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling. Taxation and Revenue Department rulings are compiled and available on the Department's web page free of charge at www.tax.newmexico.gov. Click on "Statutes and Department Directives" under the "Tax Library" menu on the homepage.

Public Decisions & Orders. All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the Department's web page free of charge at www.tax.newmexico.gov. Click on "Statutes and Department Directives" under the "Tax Library" menu on the homepage.

FOR FURTHER ASSISTANCE

The New Mexico Taxation and Revenue Department's local tax offices provide full service and information about Department-administered taxes, programs, and forms as well as specific information about your filing situation.

ALBUQUERQUE (505) 841-6200

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

FARMINGTON (505) 325-5049

Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

LAS CRUCES (575) 524-6225

Taxation and Revenue Department
2540 S. El Paseo Building #2
P.O. Box 607
Las Cruces, NM 88004-0607

ROSWELL (575) 624-6065

400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

SANTA FE (505) 827-0951

1200 St. Francis Drive
P.O. Box 5374
Santa Fe, NM 87504-5374

Main switchboard (Santa Fe): (505) 827-0700

This publication provides instructions or general information to the taxpayer. It does not constitute a regulation or ruling as defined under Section 7-1-60, *New Mexico Statutes Annotated*, 1978. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.